

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W. SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF)	
)	DATE: October 29, 2002
Gregory McCarthy)	
Deputy Chief of Staff for)	
Policy and Legislative Affairs)	DOCKET NO.: CF 2002-05
Executive Office of the Mayor (EOM))	

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter OCF) pursuant to a referral from the Office of the Inspector General for the District of Columbia (hereinafter OIG) in a published report entitled "Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)" (hereinafter Report) (OIG Control Number 2001-0188 (S)). In the Report, the Inspector General has alleged that certain current and former employees engaged in behavior that violated provisions of the District of Columbia Personnel Manual Standards Of Conduct.

In the instant case, the Inspector General has alleged that Gregory McCarthy (hereinafter respondent) engaged in private or personal business activity on government time and with the use of government resources on behalf of the private, non-profit Millennium Washington Capitol- Bicentennial Corporation (hereinafter MWCBC) in violation of §§1803.1(f), 1804.1(d) and 1805.2 of the District Personnel Manual (hereinafter DPM).¹

¹ DPM §1803.1(f) reads as follows:

An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in, or create the appearance of the following:

...

(f) Affecting adversely the confidence of the public in the integrity of government[.]

DPM §1804.1 reads, in part, as follows:

An employee may not engage in any outside employment or other activity, which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not

Upon OCF's evaluation of the material amassed in this inquiry, it was decided that the parameters of this inquiry extended solely to the DPM employee conduct regulations. There was not any credible evidence that the respondent committed any violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Any alleged violation of the Act by the respondent would be predicated upon the premises that respondent realized personal gain through official conduct, engaged in any activity subject to the reporting requirements and contribution limitations of the Act, or used District government resources for campaign related activities.² See D.C. Official Code §1-1106.01. Additionally, fines may be assessed for any violation of the Act. OCF's review did not reveal any such activity.

Accordingly, where a violation of the DPM employee conduct regulations has occurred, OCF is limited with respect to any action which otherwise may be ordered. Inasmuch as the DPM consists of personnel regulations, fines cannot be assessed. The Director may only recommend disciplinary action to the person responsible for enforcing the provisions of the employee conduct rules against the respondent.

By letter dated June 7, 2002, OCF requested respondent to appear at a scheduled hearing on June 17, 2002. The purpose of the hearing was to show cause why the respondent should not be found in violation of the Standards of Conduct, which the respondent was alleged to have violated in the OIG Report.

Summary of Evidence

The OIG has alleged that the respondent violated the above referenced provisions of the DPM as a result of his role as a director for MWCBC, which was a private non-profit

compatible with government employment include but are not limited to, the following:

...

- (d) Maintaining financial or economic interest in or serving (with or without compensation) as an officer or director of an outside entity if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee[.]

DPM §1805.2 reads as follows:

No District employee... may acquire an interest in or operate any business or commercial enterprise, which is in any way related, directly or indirectly, to the employee's official duties, or which might otherwise be involved in an official action taken or recommended by the employee, or which is in any way related to matters over which the employee could wield any influence, official, or otherwise.

² D.C. Law 14-36, "Campaign Finance Amendment Act of 2001," effective October 13, 2001, prohibits the use of District government resources for campaign related activities.

tax exempt corporation that was used to generate funds for non-government activity. Consequently, the OIG has alleged that the respondent engaged in activity which was not compatible with the full and proper discharge of his responsibilities as a government employee and created the appearance of in impropriety. The OIG relies exclusively upon its Report, which is incorporated herein in its entirety.

On June 17, 2002 the respondent appeared with counsel, Mark H. Touhey, Esq., before OCF at a scheduled hearing, conducted by William O. SanFord, Esq., Senior Staff Attorney. Wesley Williams, OCF Investigator, was also present.

Synopsis of Proceedings

The respondent is currently employed as the EOM Deputy Chief of Staff for Policy and Legislative Affairs. He has occupied this position approximately one (1) year. Prior to this appointment, respondent was employed as EOM Director of Policy Evaluation, his first D.C. government position, from January 1999 until August 2001.

During examination by Mr. SanFord, the respondent testified that he is familiar with the Standards of Conduct as cited in the District of Columbia DPM. The respondent further testified that he had read and understood the allegations against him in the Report. The respondent was asked whether he was familiar with the MWCBC and to explain his relationship to and his involvement in, if any, in the corporation.

The respondent conceded that he, along with Henry "Sandy" McCall (hereinafter McCall) and Marie Drissel (hereinafter Drissel), had served as incorporators of MWCBC in the fall of 1999 while they were all employed by D.C. government. However, the respondent stated that subsequent to signing its articles of incorporation, he did not participate in MWCBC in any manner. He further stated that he resigned from MWCBC in the fall of 2000.

Respondent averred that he became an MWCBC incorporator pursuant to a request from McCall with the understanding that his signing of the articles of incorporation would be the extent of his involvement. Respondent further stated that he had no knowledge that he was a director of the corporation until he was advised of the allegations against him. Respondent denied any involvement in MWCB beyond signing its articles of incorporation.

During direct examination by counsel, the respondent testified that he never held an interest, financial or otherwise in the MWCB; that he never discussed or transacted business on behalf of the corporation; that he never performed any duties or spoke with any one on behalf of the corporation; that he never attended a meeting or solicited funds on behalf of the corporation; that he never believed or understood that his role as an incorporator of the MWCB at anytime interfered with or was inconsistent with his role as a government official; and, finally, that he resigned from the corporation when he became aware that his

involvement, albeit limited to that of an incorporator, was inappropriate.

Findings of Fact

Having reviewed the record in its entirety, I find:

1. Respondent, Gregory McCarthy, currently EOM Deputy Chief of Staff for Policy and Legislative Affairs, as EOM Director of Policy Evaluation from January 1999 until August 2001, was a public official required to file a Financial Disclosure Statement (hereinafter FDS) with OCF.
2. MWCBC was incorporated in October 1999 under the auspices of McCall, then EOM Deputy Chief of Staff for External Affairs, as a private, non-profit corporation authorized to solicit donations for the 2000 millennium celebration in the District of Columbia. Report at 50-51.
3. From November 1999 through the middle of January 2000, MWCBC operated out of the EOM office located at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C. Report at 50-51 & 59.
4. From the middle of January through July 2000, MWCBC operated out of 1730 K Street, N.W. and was still supported by D.C. government funds and resources. Report at 59, 62 & 65.
5. From July through November 2000, MWCBC operated, once again, out of the EOM office located at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C. Report at 65 & 67.
6. Pursuant to a request by McCall, the respondent signed on as one of the MWCBC incorporators.
7. The respondent trusted McCall not to involve him in any activity that conflicted with the ethics laws of the District of Columbia.
8. Respondent was not involved in any other activities associated with MWCBC.

Conclusions of Law

1. Respondent is an employee of the District of Columbia government and is subject to the enforcement provisions of the employee conduct regulations at DPM §§1800 et seq.
2. From November 1999 through November 2000, MWCBC, notwithstanding that it was a private, non-profit corporation, was supported by D.C. government employees,

funds and resources; and, the respondent believed that MWCBC business was government business.

3. Respondent used District of Columbia government time and resources to co-incorporate MWCBC in the fall of 1999; and, notwithstanding that the respondent believed that MWCBC business was government business, it is more likely than not that the respondent was well aware that his actions violated the employee conduct regulations because respondent was co-signing for the creation of a private, non-profit corporation to be used as a conduit for government business.
4. The responsibility for enforcing the provisions of the employee conduct rules against the respondent rest with Mayor Anthony A. Williams (hereinafter the Mayor).

Recommendation

Prior to the issuance of the Report, the Mayor appointed an EOM Ethics Counselor and scheduled meetings and workshops to inform and clarify each staff member as to the provisions and prohibitions of the DPM Standards of Conduct. The respondent has been in attendance at these sessions.

Because the Mayor has taken steps to definitively and thoroughly train and inform each staff member as to provisions and prohibitions of the DPM Standards of Conduct, and because the respondent had limited participation in the business of MWCBC, and has since availed himself of ethics training, I hereby recommend the Director to recommend to the Mayor to warn the respondent to refrain, in the future, from prohibitive conduct.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

Prior to the issuance of the Report, the Mayor appointed an EOM Ethics Counselor and scheduled meetings and workshops to inform and clarify each staff member as to the provisions and prohibitions of the DPM Standards of Conduct. I understand that the respondent has been attendance at these sessions.

Because the Mayor has taken steps to definitively and thoroughly train and inform each staff

member as to provisions and prohibitions of the DPM Standards of Conduct, and because the respondent had limited participation in the business of MWCBC, and has since availed himself of ethics training, I hereby recommend the Director to recommend to the Mayor to warn the respondent to refrain, in the future, from prohibitive conduct.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

Date

Cecily E. Collier-Montgomery
Director

Parties Served:

Gregory McCarthy
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Mark H. Tuohey, III, Esq.
Vinson and Elkins
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Charles Maddox, Esq.
Inspector General
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Washington, D.C. 20005

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order.

S. Wesley Williams
Investigator

NOTICE

Pursuant to 3 DCMR § 3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this Order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, N.W., Washington, D.C. 20009.